



# **INSOL International**

## **Specifics of Personal and Corporate Bankruptcy Under Russian and Ukrainian Laws**

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## Specifics of Personal and Corporate Bankruptcy Under Russian and Ukrainian Laws

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## Acknowledgement

According to Russian law ordinary individuals cannot be declared bankrupt. Only individuals who are engaged in entrepreneurial activities may be subject to bankruptcy. As a consequence, there are a host of practical difficulties that arise when court proceedings are initiated, for example, is it possible to commence bankruptcy proceedings if an individual entrepreneur has lost this status?; or is it possible to distinguish a debtor's personal property and the property of the family that may be subject to foreclosure?

In the Ukraine, the position is the same and ordinary individuals have no recourse to bankruptcy proceedings in the event of financial difficulties. There have been numerous attempts to introduce reforms and draft legislation was introduced in 2012, but these laws have not been implemented yet.

With respect to insolvent corporate entities, under Russian law there are specific regulations that apply to different types of Russian corporate entities. Similarly, in the Ukraine there are special laws that apply to specific categories of debtors such as agriculture producers, companies that have special social values, and insurers.

This paper provides a wealth of information that would otherwise not be easily accessible to our members, and to that end INSOL International sincerely thanks Yadviga Pavlovich & Olga Vorozhbyt of Chadbourne & Parke LLP for preparing this excellent and informative paper.

May 2014



## Specifics of Personal and Corporate Bankruptcy Under Russian and Ukrainian Laws

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### Personal Bankruptcy

#### *Russia*

Russian law distinguishes individuals who engage in entrepreneurial activities independently from ordinary individuals. Individual entrepreneurs should be registered according to the procedure which is quite similar to the one stipulated for the registration of legal entities<sup>1</sup>.

#### *Bankruptcy of ordinary individuals*

As of today, according to the Bankruptcy Law<sup>2</sup>, bankruptcy proceedings may be initiated against individual entrepreneurs only, but not against ordinary individuals.

Currently, legislation relating to the insolvency of ordinary individuals is not developed. The Bankruptcy Law is included in Chapter X. However, it is not effective with respect to ordinary individuals until the adoption of the supporting legislation<sup>3</sup>. Such legislation (Bill No. 105976-6) has been considered by the RF State Duma since July 2012 and there is no clarity when it may be adopted (it has been passed in the first hearing, the second hearing was first scheduled for July 2013 but then postponed indefinitely.)

Primarily, the issue of bankruptcy of ordinary individuals is important for commercial banks, since the amount of individual debt under credit facilities and credit cards is significant and is increasing. Debt recovery options available to creditors of individuals are very limited. In practice it means that the creditor who came first may be able to get its money back (at least in part); but, other creditors (for instance, those unaware of the recovery proceedings or those whose loan has not yet matured or whose claims have not yet been confirmed by an effective court judgment) may not be able to collect debts due to the lack of assets belonging to the debtor.

Another difficulty the creditors may face during the recovery proceedings is that the Russian civil procedure laws limit the scope of an individuals' property, that may be subject to foreclosure, for example, the only residence of a debtor and his family (if it is not mortgaged) is exempt from the foreclosure<sup>4</sup>.

On the other hand, an ordinary individual may be personally interested in becoming bankrupt since it may help him to solve his difficult financial situation instead of getting deeper and deeper in debt. For instance, as a result of bankruptcy proceedings, he may have his debts rescheduled / postponed or discharged in full or in part.

Currently the Bankruptcy Law<sup>5</sup> states that a court may commence bankruptcy proceedings against an individual if the total outstanding claims of a debtor exceeds 10 000 rubles (about 280 USD)<sup>6</sup>, and the same rule is applicable for individual entrepreneurs.

The existing wording of the Bankruptcy Law provisions regarding the bankruptcy of ordinary individuals establishes that, among other exceptions such as the general bankruptcy procedure, certain obligations of ordinary individuals like compensation for harm caused to life and health and alimony obligations, remain valid (non - discharged) after completion of the bankruptcy proceedings.

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\* The views expressed in this article are the views of the authors and not of INSOL International, London.

<sup>1</sup> The Russian tax authorities register individual entrepreneurs; the procedure for such registration is established by Federal Law No. 129-FZ "On State Registration of Legal Entities and Individual Entrepreneurs" dated August 8, 2001.

<sup>2</sup> Federal Law No. 127-FZ "On Insolvency (Bankruptcy)" dated October 26, 2002 (the "Bankruptcy Law", hereinafter the definitions of the laws are relevant to the respective Russian or the Ukrainian sections only).

<sup>3</sup> See Clause 3 of Article 1 of the Bankruptcy Law.

<sup>4</sup> See Article 446 of the RF Civil Procedure Code (Federal Law No-137-FZ dated November 14, 2002).

<sup>5</sup> We cannot exclude that these provisions may be significantly changed or amended before putting them into effect.

<sup>6</sup> Clause 2 of Article 6 of the Bankruptcy Law.



Completion of the bankruptcy proceedings for ordinary individuals means, as mentioned above, discharge of certain obligations. Debts under bank loans or on credit cards are not paid during the bankruptcy proceedings, and those debts will be cancelled. Bankruptcy proceedings cannot be initiated each time an individual accumulates too many unpaid loans. The current version of the Bankruptcy Law provides that repeated bankruptcy proceedings may not be initiated within 5 years from the date of declaring an individual a bankrupt. Further, if repeated bankruptcy proceedings are initiated, not all of the individual's debts will be discharged.

### *Bankruptcy of individual entrepreneurs*

Currently, Russian law allows bankruptcy of individuals conducting entrepreneurial activities and who are registered as such only. In contrast to Ukraine, there are no reported instances where individuals would deliberately register as entrepreneurs in order to avoid the payment of debts in bankruptcy. Russian individuals are not known to seek bankruptcy (using all possible means associated with it), as it happens in Ukraine.

Bankruptcy of individual entrepreneurs raises a number of practical issues, such as whether it is possible to initiate bankruptcy proceedings if an individual entrepreneur has lost this status; how to distinguish his personal property and the property of his family from the property subject to the foreclosure, etc.

In 2011, the RF Supreme Arbitrazh Court<sup>7</sup> issued detailed clarifications on the bankruptcy of individual entrepreneurs (Resolution No. 51 "Consideration of Individual Entrepreneur Bankruptcy Cases" dated June 30, 2011<sup>8</sup>).

Although the only creditors who may initiate bankruptcy proceedings are the creditors whose claims are related to the entrepreneurial activities of the insolvent individual, other creditors could join in the bankruptcy proceedings (if already initiated) and exercise their rights as bankruptcy creditors<sup>9</sup>.

The RF Supreme Arbitrazh Court has also clarified that if a court finds that a debtor has never had the status of an individual entrepreneur or has lost his status, the application to initiate bankruptcy proceedings against such a debtor shall be returned to the claimant without being considered on the merits of the case.

If a debtor has lost his status as an individual entrepreneur in the course of bankruptcy proceedings, the bankruptcy case should be considered by the court, but the completion of the bankruptcy proceedings will not lead to termination of the individual entrepreneur's status (which is clear, since the debtor has already lost his status)<sup>10</sup>.

The RF Supreme Arbitrazh Court has also clarified that although joint property of a married couple (where only one of the spouses is an insolvent individual entrepreneur) cannot be included in the bankruptcy estate, and execution cannot be levied on such property during bankruptcy proceedings, a court may seize such property in order to avoid the property being alienated. Property owned by the debtor as a result of division of the joint property shall be included in the bankruptcy estate<sup>11</sup>.

Similar to the bankruptcy proceedings against ordinary individuals, property of a debtor that is not subject to foreclosure under the law of civil procedure (such as the only residence of the debtor and his family - see above) cannot be foreclosed and then sold in the course of bankruptcy proceedings against an individual entrepreneur<sup>12</sup>.

Further, once an individual entrepreneur is declared bankrupt, that person should be relieved of the outstanding obligations in the course of receivership proceedings. However, the specifics of individual entrepreneurs' bankruptcy mean that the claims relating to his entrepreneurial activities including tax

<sup>7</sup> Currently, this is the highest judicial body in the system of state commercial courts (named arbitrazh courts). Consolidation of the highest judicial bodies (the RF Supreme Arbitrazh Court and the RF Supreme Court) should be finalized in August 2014 through the creation of one highest judicial body - the RF Supreme Court. Please note that according to the current laws, bankruptcy cases against individuals (including ordinary individuals, though as we mentioned before, such procedure has not yet become effective) shall fall within the competence of arbitrazh courts.

<sup>8</sup> Hereinafter referred to as the "RF Supreme Arbitrazh Court's Resolution No. 51".

<sup>9</sup> See Clauses 7, 30 of the RF Supreme Arbitrazh Court's Resolution No. 51.

<sup>10</sup> See Clause 6 of the RF Supreme Arbitrazh Court's Resolution No. 51.

<sup>11</sup> See Clauses 18 and 19 of the RF Supreme Arbitrazh Court's Resolution No. 51.

<sup>12</sup> See Clause 11 of the RF Supreme Arbitrazh Court's Resolution No. 51.



obligations, should be cancelled irrespective of whether they were filed in the course of bankruptcy proceedings.

Any other "ordinary" claims against an individual entrepreneur (the ones not connected with his entrepreneurial activity), that had not been filed in the course of the bankruptcy proceedings, may be filed with a court in an ordinary manner (according to the applicable procedural law), after the completion of the bankruptcy proceedings. The creditors that have such claims may opt to file them within the bankruptcy proceedings and take the risk that a part of such claims will not be recovered and then subsequently cancelled, or wait for the completion of the bankruptcy proceedings and try to recover the debts from the individual in full. The chances of a full recovery after the completion of the bankruptcy proceeding are low.

Obligations connected with the identity of an individual entrepreneur (e.g. alimony obligations) will remain enforceable after the completion of the bankruptcy proceedings<sup>13</sup>.

Another consequence of the bankruptcy proceedings against an individual entrepreneur that is typical of such proceedings only, is the termination of the previous status effective from the date of declaring him a bankrupt. An individual entrepreneur that is declared bankrupt cannot also be registered as such within one year after becoming bankrupt, and cannot be re - registered as an individual entrepreneur during the receivership proceedings.<sup>14</sup>

## **Ukraine**

### *Bankruptcy of ordinary individuals*

On 19 January 2013 the Law of Ukraine "On Amendments to the Law of Ukraine "On Restoring Debtor's Solvency or Declaring it Bankrupt" (the "Bankruptcy Law")<sup>15</sup> came into effect. The Bankruptcy Law introduced a number of important changes to the legislative provisions on the protection of rights of secured creditors and the enforcement of security in bankruptcy proceedings.

The specific regulation with respect to the bankruptcy of individuals was also expected to be included in the new version of the Bankruptcy Law. As of today, however, bankruptcy proceeding may be initiated against individual entrepreneurs only and not against ordinary individuals.

Both Ukrainian and Russian laws distinguish individual entrepreneurs from ordinary individuals. Under the Commercial Code of Ukraine individual entrepreneurs are those individuals, who carry out business activities without establishing a legal entity and registered<sup>16</sup>.

Thus, the ordinary individuals (natural persons) cannot be the subject to bankruptcy proceedings.

After the world economic crisis, several people in the Ukraine could not manage their debts. The issue whether to provide a "breathing space" for debtors became more topical than ever before and become of vital importance.

Due to this difficulty there were several attempts to introduce bankruptcy proceedings for ordinary individuals. In 2009, a draft law, was submitted to the Ukrainian Parliament, and it contained a reference to the US concept of a "fresh start" and suggested the possibility for a debtor to become totally economically rehabilitated. The Ukrainian Parliament did not support this draft.

In 2012 a new draft law was introduced to the Ukrainian Parliament. Unlike the 2009 draft law, the grounds for initiating bankruptcy were simplified and the suggested consequences for a bankrupt individual were - a negative credit entry, prohibition to get registered as an individual entrepreneur, become a founder or a member of a board of a legal entity with five years limitation. As of today, the 2012 Draft Law is still pending in the legislative body.

It is important to note that according to the statistics, Ukrainian debtors engage in excessively risky credit behavior. A significant number of them attempt to evade their obligations immediately after they

<sup>13</sup> See Clauses 28, 29 of the RF Supreme Arbitrazh Court's Resolution No. 51.

<sup>14</sup> Which is initiation after than the individual entrepreneur is declared bankrupt, see Clause 37 of the RF Supreme Arbitrazh Court's Resolution No. 51

<sup>15</sup> Law of Ukraine No. 2343-XII "On Restoring Debtor's Solvency or Declaring it Bankrupt" dated 14 May 1992

<sup>16</sup> The Ukrainian state authorities register individual entrepreneurs; the procedure for such registration is established by the Law of Ukraine No. 755-IV "On State Registration of Legal Entities and Individual Entrepreneurs" dated May 15, 2003

receive the loan. Such debtors would gain an extraordinary advantage by using the insolvency system to evade their contractual obligations by means of fraud. The initiation of insolvency proceedings against natural persons may also produce undesirable incentives to other debtors to act irresponsibly by taking more loans than they can reasonably service. In addition, such changes would increase the workload of the court system and make the courts even more busy.

Thus despite the many advantages, as a result of the new laws to institute proceedings against insolvent natural persons, it may cause substantial hazard for the state budget, banks and the court system.

Therefore, considering the general credit culture, conclusions of bankers and lawmakers, and the possibility of a significant threat to the banking and judicial system, it is unlikely that Ukraine would implement the regime of bankruptcy for private individuals (natural persons) in the coming years.

On the other hand, currently, natural persons who are engaged in a business activity, registered in a due manner and have an unmanageable debt that has arisen as a result of their business can be recognized as bankrupts in Ukraine.

There were a wave of attempts to interpret in courts the term “*individual entrepreneur*” in order to release the debts from private individuals. This was despite the established practice that under the Bankruptcy Law and existing court practice only legal entities and individual entrepreneurs can be recognized as bankrupts in Ukraine. Such an approach was confirmed by the Supreme Court of Ukraine and the Supreme Commercial Court of Ukraine, which stated that individual entrepreneurs having debts that are not the result of carrying out business activities are not subject to the Bankruptcy Law and, as such, are also not subject to bankruptcy<sup>17</sup>.

#### *Bankruptcy of individual entrepreneurs*

The bankruptcy of individual entrepreneurs is regulated by the general provisions of the Bankruptcy Law for legal entities with several specific exceptions.

The criteria of recognition of an individual entrepreneur as a bankrupt is an existing debt that is related to carrying out a business activity that could not be managed. An application to institute bankruptcy proceedings for an individual entrepreneur can be filed in a competent commercial law court by a debtor or his creditors. The debtor could also submit a payment plan with the application at the time of commencement of a bankruptcy procedure<sup>18</sup>.

With the initiation of the bankruptcy procedure, a court can seize the property of the individual entrepreneur.

The agreements of the individual entrepreneur relating to alienation or transmission by other means of his property to interested persons, within one year before initiation of bankruptcy proceedings, can be deemed by the commercial law court invalid upon an application by the creditors.

Upon submission of an application of an individual entrepreneur the commercial law court can adjourn the bankruptcy proceedings to allow an individual entrepreneur to manage his debt with creditors or sign a settlement agreement. If the individual entrepreneur did not succeed with his out of court initiatives the commercial court declares the individual entrepreneur bankrupt, and then commences a liquidation procedure and appoints a liquidation manager.

After commencing a liquidation procedure: (i) interest, fines and penalties cannot be charged, and other financial (economic) sanctions with respect to all individual entrepreneur's obligations could not be imposed; (ii) collection of funds under all writs should be ceased excluding the writs ordering the collection of alimony and satisfaction of claims for compensation for human life and health damages<sup>19</sup>.

As one of the consequences, bankruptcy cases could not be commenced against an individual entrepreneur by his own initiative within five years after the individual entrepreneur has been declared bankrupt. The Bankruptcy Law also provides immediate sanctions and temporary limitations of civil rights for those who have become bankrupt. Since the commencement of the liquidation procedure,

<sup>17</sup> See Clause 7 of the Supreme Commercial Court of Ukraine Resolution in case No. 01/1876, dated September 20, 2009 and Clauses 16, of the Supreme Court of Ukraine Decision in case No. 6/33, dated 20 November 2007.

<sup>18</sup> See Clause 4 of Article 90 of the Bankruptcy Law.

<sup>19</sup> See Clause 5 of Article 91 of the Bankruptcy Law





the state registration and licenses to conduct certain types of businesses by individual entrepreneurs becomes invalid and for three years the declared bankrupt cannot be registered as an individual entrepreneur, acquire property or receive funds on credit, obtain bail, or pledge property<sup>20</sup>.

Such consequences are quite lenient for people who act in a deplorable manner and, as previously mentioned, they are not quite correlated with the established principles of equal constitutional rights and guaranties under Ukrainian legislation.

However, in general, the introduction of the bankruptcy of individual entrepreneurs could significantly enable individuals who are in a *"debt pit"*, to rehabilitate their economic situation.

## Corporate Bankruptcy

### Russia

#### *Bankruptcy of several legal entities*

Russian legislation regulating insolvency issues consists of provisions of the RF Civil Code, the Bankruptcy Law, the Law on Bankruptcy of Credit Organizations<sup>21</sup> and certain other laws and Regulatory Acts.

The Bankruptcy Law, on the one hand, establishes general regulations on the bankruptcy proceedings (including the legal conditions for the recognition of a debtor as a bankrupt). This Law also contains certain specific provisions applicable to the bankruptcy of participants in specific legal relationships, such as above - mentioned individuals, and "town - forming enterprises", agricultural producers, developers, and some others.

First it is important to state that Russian law does not allow bankruptcy of certain types of legal entities. For instance, Russian law prohibits bankruptcy of state enterprises based on the right of operative management<sup>22</sup> and state corporations<sup>23</sup>. If state enterprises based on the right of operative management are quite common, the number of state corporations are very limited, and state corporations such as Rosatom, Vnesheconombank, Rostec and Deposit Insurance Agency (the last one plays important role in bankruptcy of Russian credit organizations) are of great importance for the Russian economy.

In case of insufficiency of property of the state enterprises, based on the right of operative management the owner of the property shall have subsidiary liability for the obligations. The owners of the property of such state enterprises should be a state or municipal governmental body, which has established the enterprise and provided property<sup>24</sup>. If therefore such a state enterprise is unable to pay its debts, its creditors may expect their claims to be honored by the respective governmental body.

In contrast to the state enterprises, the laws regulating state corporations (each of the state corporations was established under a separate law) specify that the state is not liable for obligations of a state corporation. Moreover, Federal Law No. 317-FZ "On the State Corporation for Nuclear Energy 'Rosatom'" dated 1 December 2007, establishes that certain assets specified by the RF Government cannot be subject to foreclosure<sup>25</sup>. These facts have left some legal scholars doubtful whether the interests of state corporations' creditors are duly protected. There have been no reported instances however, where state corporations have had any problems with the repayment of their debts.

Bankruptcy proceedings in respect of certain other legal entities are significantly different from the general proceedings.

<sup>20</sup> See Clause 8 of Article 92 of the Bankruptcy Law

<sup>21</sup> Federal Law No. 40-FZ "On Insolvency (Bankruptcy) of Credit Organizations" dated February 25, 1999 (the "Law on Bankruptcy of Credit Organizations").

<sup>22</sup> Russian law divides the state enterprises into two types: those which are based on economic management (so-called "state unitary enterprises") and those which are based on operative management (state (*literally kazennye*) enterprises, sometimes they are called in English as "treasury enterprises").

<sup>23</sup> See Clause 1 of Article 65 of the RF Civil Code (Federal Law No 51-FZ dated November 30, 1994).

<sup>24</sup> See Clause 5 of Article 115 of the RF Civil Code.

<sup>25</sup> Currently this list only includes several office buildings in Moscow where Rosatom is located, see Resolution No. 346 of the RF Government dated May 6, 2008.





### *Bankruptcy of commercial banks*

The most illustrative example is bankruptcy proceedings of credit organizations (including commercial banks).

At the end of 2013 - beginning of 2014, the Central Bank of Russia revoked banking licenses of a number of Russian banks. The explanation given was that the Central Bank of Russia continues its fight against commercial banks involved in illegal operations, violating banking regulations and providing false information about their financial status.

The most well - known case is MasterBank (which lost its banking license in November 2013), a bank which was on the list of 100 largest Russian banks and among the top 40 largest Russian banks by the aggregate amount of individual deposits. Revocation of the banking license of MasterBank was very painful for its clients, most of whom are small commercial legal entities such as shops, restaurants and cafes, and individuals who deposited their funds with this bank.

Proactive measures to prevent bankruptcy and specific regulations relating to the bankruptcy proceedings of commercial banks are established by the Law on Bankruptcy of Credit Organizations along with other laws and regulatory Acts governing banking activities. The Bankruptcy Law is also applicable to the bankruptcy of commercial banks if the specific law, i.e., the Law on Bankruptcy of Credit Organizations, does not regulate certain issues. For example, legal grounds for invalidation of the bankrupt's transactions are set in the Bankruptcy Law<sup>26</sup>.

The Law on Bankruptcy of Credit Organizations provides for several types of financial rehabilitation measures, which are introduced by and performed under the control of the Central Bank of Russia<sup>27</sup>.

Revocation of a banking license is a radical measure and a formal starting point for the initiation of bankruptcy proceedings against a commercial bank.

Bankruptcy proceedings in respect of commercial banks can only be commenced upon withdrawal of their banking license by the Central Bank of Russia, and bankruptcy can result in liquidation only.

Claims for initiation of the bankruptcy proceedings may be filed by the commercial bank itself, bankruptcy creditors (including individuals), competent state bodies and the Central Bank of Russia<sup>28</sup>.

Under the Russian law, deposits of individuals in commercial banks (which are included in the specific list) are insured in an amount not exceeding 700,000.00 Rubles (about US \$19,500.00). After the revocation of the banking license, individuals may receive compensation of their deposits from the Deposit Insurance Agency, which will afterwards participate in the bankruptcy proceedings as a bankruptcy creditor (since respective claims of the individuals are passed to the Deposit Insurance Agency)<sup>29</sup>.

Bankruptcy proceedings of commercial banks are usually time - consuming, because of a long list of creditors and since they are commenced at the completion of the receivership proceedings. Claims remaining unpaid due to the lack of the bankrupt bank's property shall be cancelled.

### *Bankruptcy of other legal entities*

Bankruptcy of some other legal entities has some specifics.

For instance, bankruptcy of "town - forming enterprises" is performed with participation of the respective municipal governmental body. Federal or municipal bodies have the right to satisfy all the claims of the creditors and terminate bankruptcy proceedings<sup>30</sup>.

<sup>26</sup> Chapter III.1 of the Bankruptcy Law.

<sup>27</sup> See Article 3 of the Law on Bankruptcy of Credit Organizations.

<sup>28</sup> See Article 50.4 of the Law on Bankruptcy of Credit Organizations.

<sup>29</sup> See Articles 8, 12 and 13 of the Federal Law No 177-FZ "On the Insurance of Individual Deposits in Banks of the Russian Federation", dated December 23, 2003.

<sup>30</sup> See Articles 170 and 174 of the Bankruptcy Law.



Also, in the course of bankruptcy of agricultural producers, land plots may only be sold within the limits established by law<sup>31</sup>. A court should also take into account seasonal agricultural works when scheduling the respective bankruptcy procedures (financial rehabilitation or external management)<sup>32</sup>.

Insolvency of developers happen quite often. In the circumstances when prices for residential premises are not stable, a lot of individuals prefer to "buy" apartments at the construction stage. Provisions of the Bankruptcy Law regulating bankruptcy of developers are aimed at protecting the interests of individual investors, and most of them are keen to receive apartments they paid for (not their money back). For this reason, in contrast to the general bankruptcy proceedings, the law regulating developer bankruptcy cases accepts not only monetary claims but claims made by investors for a transfer of the residential premises (value of such claim is determined based on the amount of money paid to the developer)<sup>33</sup>.

Further, the Bankruptcy Law provides for the possibility of satisfying investors' claims by means of assigning to them the premises in incomplete buildings. Meanwhile, such transfers can be performed not only at a stage of receivership proceedings of the bankrupt developer, but also at the earlier stages, during financial rehabilitation or external management. We are aware of at least one successful example when investors obtained residential premises in an incomplete building during bankruptcy proceedings of an insolvent developer, and then construction was completed by a different developer engaged by the investors<sup>34</sup>.

The Russian Bankruptcy Law does not provide any specific regulation for cross - border insolvency issues. It appears that issues relating to co-operation between Russian courts and foreign state courts on insolvency have to be resolved based on applicable international treaties. In Russian bankruptcy proceedings, foreign creditors enjoy the same treatment regime as Russian creditors therefore they are undoubtedly entitled to participate in the bankruptcy proceedings in Russia.

## ***Ukraine***

The regulation of insolvency in Ukraine is governed by the Bankruptcy Law, the Commercial Procedural Code of Ukraine, and other legislative Acts of Ukraine.

### ***Bankruptcy of several legal entities***

The Bankruptcy Law provides the general insolvency procedure as well as specific procedures with respect to the bankruptcy of different types of Ukrainian corporate entities.

Bankruptcy proceedings for certain categories of debtors have important specific features, as compared with the generally applicable bankruptcy regime. Such categories of debtors include (i) banks, (ii) insurance companies, (iii) issuers or managing companies of the mortgage certificates, (iv) "town - forming enterprises", (v) agricultural producers, (vi) debtors liquidated by their owners and some others<sup>35</sup>.

Ukrainian legislation does not allow bankruptcy of certain kinds of legal entities, such as: (i) state enterprises, which are called "kazenne pidpryyemstvo" and (ii) enterprises, which are exempted from the application of the Bankruptcy Law by the relevant decision of the state body.

Specific features of the bankruptcy proceedings for certain defined entities include specific conditions of the bankruptcy proceedings, a specific list of priorities for the satisfaction of creditors' claims, specifics of court terms during the bankruptcy proceedings, specific procedures of realization of the debtor's assets, etc.

### ***Bankruptcy of commercial banks***

Where a bank is to be declared insolvent and the required legislation is applied, the Law of Ukraine "On Banks and Banking" should be applied in addition to the Bankruptcy Law<sup>36</sup>.

<sup>31</sup> See Clause 4 of Article 177 of the Bankruptcy Law.

<sup>32</sup> See Article 178 of the Bankruptcy Law.

<sup>33</sup> See Articles 201.2 and 201.6 of the Bankruptcy Law.

<sup>34</sup> See Article 201.10 of the Bankruptcy Law.

<sup>35</sup> Proceedings in bankruptcy cases for certain categories of Ukrainian corporate entities is regulated by Section VII of the Bankruptcy Law.

<sup>36</sup> Law of Ukraine No. 2121-III "On Banks and Banking's" dated December 12, 2000.

The question of insolvency of commercial banks in Ukraine is the same as in Russia. During the past 5 years three of the top 50 banks: Nadra bank, Rodovid bank and Ukgazbank become insolvent and stayed afloat only through the intervention of the National Bank of Ukraine.

According to the Banking Law, the National Bank of Ukraine plays a decisive role in the bankruptcy procedure of banking institutions, while parties are much more limited in their rights. The initiation of bankruptcy proceedings may be filed by the commercial bank itself or by the National Bank<sup>37</sup>. The commercial court's role is limited in general to the approval of different courts requests by the National Bank.

The National Bank commences bankruptcy proceedings in respect of banks once their banking license has been withdrawn, and that can result only in liquidation. Thus, the withdrawal of the banking license and the liquidation is a radical measure. In most of the bankruptcy proceedings involving Ukrainian banks the National Bank used the financial rehabilitation measures and placed an insolvent bank into administrative receivership after introducing a moratorium on claims from creditors<sup>38</sup>.

The system of deposit guarantees and protection of the rights of individual depositors (natural persons) in Ukraine operates according to the Law of Ukraine "On Households Deposit Guarantee System"<sup>39</sup>. Individuals may receive compensation for their deposits from the Deposit Guarantee Fund. The size of the Deposit Value Guaranteed, including the principal and interest should not exceed 200,000.00 UAH (about US \$17,450.00).

#### *Bankruptcy of other legal entities*

During bankruptcy proceedings of *"town-forming enterprises"* the local authority of the corresponding territorial community is acknowledged to be the member and plays an active role in the bankruptcy proceedings<sup>40</sup>.

In the course of bankruptcy of agricultural producers the analysis of the financial standing should be done in view of seasonality of agricultural production and its dependence on climatic and natural conditions, and also the possibility of satisfying the debtors' claims through revenues, that can be raised by the agricultural producer on completion of the relevant period of the agricultural work. The decision concerning land plots that are in the ownership of such producers, is made according to the Land Code of Ukraine<sup>41</sup>.

Since 2013 the Bankruptcy Law provides a procedure for co-operation between the Ukrainian courts and foreign courts, as well as the bankruptcy administrators within the Ukrainian and foreign bankruptcy proceedings, including provisions on recognition of foreign court judgments<sup>42</sup>.

The implementation of cross-border insolvency proceedings in Ukraine would enable participants to reach out to the debtor's assets which are located in Ukraine. This would be a great help when deciding cross-border bankruptcy cases that have been initiated in foreign jurisdictions.

<sup>37</sup> See Articles 77 of the Law on Banks and Banking s.

<sup>38</sup> See Articles 76 of the Law on Banks and Banking s.

<sup>39</sup> Law of Ukraine 4452-VI "On Households Deposit Guarantee System" dated February 23, 2012.

<sup>40</sup> See Article 85 of the Bankruptcy Law

<sup>41</sup> See Article 86 of the Bankruptcy Law

<sup>42</sup> Cross-border insolvency proceedings is regulated by Section IX of the Bankruptcy Law.